

Cup 2166

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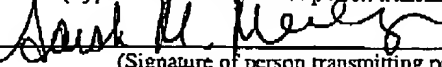
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Fax Number: (703) 746-4000 Telephone No.: _____
From: André L. Marais Reg. No. 48,095
Date: March 21, 2002 Time: 3:40 p.m.
Operator: Sarah M. Montgomery Matter: 5214P001RD3
Number of pages including cover sheet: 8
In Re Patent Application of: Kuriacose Joseph, et al.
Application No.: 09/903,457
Filed: July 10, 2001
For: APPARATUS FOR TRANSMITTING AND RECEIVING EXECUTABLE APPLICATIONS
AS FOR A MULTIMEDIA SYSTEM, AND SYSTEM TO ORDER AN ITEM USING A
DISTRIBUTED COMPUTING SYSTEM
Enclosed are the following documents: Notice of Litigation Under 37 C.F.R.
1.178 (2 pgs.) and Exhibit A (Complaint for Patent Infringement) (5pgs.).

CERTIFICATE OF TRANSMISSION

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(Rev. 11/23/97)



Attorney's Docket No.: 5214P001RD3

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re of Application of:

Kuriacose Joseph, et al.

Examiner: Kalinowski, A.

Application No.: 09/903,457

Art Group: 2166

Filing Date: July 10, 2001

For: APPARATUS FOR TRANSMITTING
AND RECEIVING EXECUTABLE
APPLICATIONS AS FOR A
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Assistant Commissioner for Patents
Washington, D.C. 20231

NOTICE OF LITIGATION UNDER 37 C.F.R. 1.178

Sir:

Notice is hereby provided that U.S. Patent No. 5,819,034, on which the above Reissue Patent Application is based, is involved in litigation. Specifically, the Assignee OpenTV, Inc. on February 7, 2002, filed a complaint in the U.S. District Court of Northern California alleging infringement by Liberate Technologies of U.S. Patents Nos. 5,819,034 and 5,563,648. A copy of the complaint is attached.

Regarding the status of this litigation, only the above noted complaint has been filed to date. The Examiner is invited to contact the undersigned attorney with any questions relating to the current status of the litigation.

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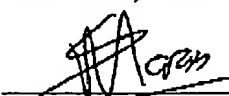
If there are any fees in connection with this Notice, please charge Deposit Account No. 02-2666.

A duplicate of this Notice is enclosed for deposit account charging purposes.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: 03/21 2002



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EXHIBIT A

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COPY

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 10 OPENTV, INC.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL
FILED

FEB - 7 2002

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

ADR

11 OPENTV, INC., a Delaware corporation,

12 Plaintiff,

13 v.

14 LIBERATE TECHNOLOGIES, a Delaware
15 corporation,

16 Defendant.

No.

C 02 0655 JL

COMPLAINT FOR PATENT
INFRINGEMENT

DEMAND FOR JURY TRIAL

17 Plaintiff OpenTV, Inc. ("OpenTV"), as its Complaint against Defendant Liberate
 18 Technologies ("Liberate"), alleges as follows:

19 PARTIES

20 1. OpenTV is a corporation incorporated under the laws of Delaware, with its principal
 21 place of business at 401 East Middlefield Road, Mountain View, California 94043.

22 2. Liberate is a corporation incorporated under the laws of Delaware, with its principal
 23 place of business at 2 Circle Star Center, San Carlos, California 94070.

24 JURISDICTION AND VENUE

25 3. This action arises under the patent laws of the United States, Title 35 of the United States
 26 Code. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
 27 §§ 1338(a) (action arising under an Act of Congress relating to patents) and 1331 (federal question)
 28 and 35 U.S.C. § 281.

COMPLAINT FOR PATENT INFRINGEMENT
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4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b), in that Liberate resides in this district, is subject to personal jurisdiction in this district and has committed acts of infringement in this district.

PRELIMINARY STATEMENT

5. OpenTV is one of the world's leading interactive television technology companies. OpenTV builds a complete "middleware" platform that enables digital interactive television.

6. OpenTV is the sole owner of numerous United States Patents in the field of digital interactive television, including: United States Patent No. 5,563,648, issued on October 8, 1996 (the "648 patent"), which is attached hereto as Exhibit A; and United States Patent No. 5,819,034, issued on October 6, 1998 (the "034 patent"), which is attached hereto as Exhibit B. The '648 patent and the '034 patent are referred to collectively herein as "the OpenTV patents."

7. Liberate competes against OpenTV in the interactive television market, developing and marketing interactive television middleware platforms under the Liberate name. OpenTV has not licensed Liberate under the OpenTV patents.

PATENT INFRINGEMENT BY LIBERATE

8. OpenTV is informed and believes, and on that basis alleges, that Liberate has infringed and continues to infringe, directly or indirectly, the OpenTV patents by its unlicensed use, promotion, manufacture, and offering for sale, in this judicial district and elsewhere in the United States, of interactive television middleware.

9. OpenTV is informed and believes, and on that basis alleges, that Liberate's infringement of the OpenTV patents has been and will continue to be willful.

10. OpenTV is damaged and irreparably injured by Liberate's infringing activities and will continue to be so damaged and irreparably injured unless Liberate's infringing activities are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, OpenTV requests that the Court:

A. Enter judgment that OpenTV is the owner of the OpenTV patents and all rights of recovery under each of them, and that each of those patents was duly issued and is valid;



- 1 B. Enter judgment that Liberate has infringed the OpenTV patents, directly or indirectly;
2 C. Preliminarily and permanently enjoin Liberate, its officers, agents, servants,
3 employees and those in concert or participation with them, from any unlicensed use of the inventions
4 claimed in the OpenTV patents;
5 D. Award OpenTV damages as compensation for Liberate's infringement of the OpenTV
6 patents, such award to include prejudgment interest;
7 E. Treble such award of damages due to the willful nature of Liberate's infringement of
8 the OpenTV patents;
9 F. Declare that this is an exceptional case under 35 U.S.C. § 285 and award OpenTV its
10 attorneys' fees and expenses in this action;
11 G. Award OpenTV its costs in this action; and
12 H. Enter such other and further relief to which OpenTV may be entitled as a matter of
13 law, or which may otherwise be just and proper.

14 Dated: February 7, 2002

15 HAROLD McELHINNY
16 MICHAEL A. JACOBS
17 GEORGE C. HARRIS
18 MORRISON & FOERSTER LLP

19 By: 

Michael A. Jacobs

Attorneys for Plaintiff
OPENTV, INC.

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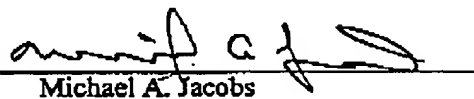
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DEMAND FOR JURY TRIAL

2 Plaintiff OpenTV hereby demands trial by jury of all claims and counterclaims in this action
3 for which there is a right to trial by jury.

4 Dated: February 7, 2002

5 HAROLD McELHINNY
6 MICHAEL A. JACOBS
7 GEORGE C. HARRIS
8 MORRISON & FOERSTER LLP

9 By: 
Michael A. Jacobs

Attorneys for Plaintiff
OPENTV, INC.

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